

# Regulating the Culture of Banks in the United Kingdom: Strengthening legal accountability or just better leadership?

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## **Abstract:**

The Senior Managers Regime came into effect in March 2016. It is expected to change the behaviours of senior bank managers and transform the culture of banks through individual accountability and sanctions for non-compliance. However, without due consideration to the leader-follower dynamics, it is difficult to see how law reforms could compel a cultural shift in banks beyond superficial compliance.

## **Introduction:**

The Global Financial Crisis (GFC) in 2008-9 and successive bank scandals in the United Kingdom had far-reaching adverse effects on the economy and the wider socio-political landscape. Distrust and dissatisfaction amongst the British public of banks were widespread as

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the negative impact of the economic crisis affected many compelling the government to take action.

In the summary Report by the Parliamentary Commission on Banking Standards (the Report), it states that:

Too many bankers, especially at the most senior levels, have operated in an environment with insufficient personal responsibility. Top bankers dodged accountability for failings on their watch by claiming ignorance or hiding behind collective decision-making. They then faced little realistic prospect of financial penalties or more serious sanctions commensurate with the severity of the failures with which they were associated. Individual incentives have not been consistent with high collective standards, often the opposite.<sup>4</sup>

Thus, it is obvious that legislators are determined to rein in senior bank managers and make them accountable for any future failings. The Report also went on to note that:

Proponents of corporate governance solutions can be prone to overestimate the benefit that their particular favoured measure will provide. Structural or procedural changes to bank boards would not have prevented the last crisis and will not prevent the next one. Nevertheless, the Commission has a number of proposals which, taken together, we believe will help to bring about a desirable change in the culture and overall approach of boards.<sup>5</sup>

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<sup>4</sup> Parliamentary Commission on Banking Standards, 'Changing banking for good: Report of the Parliamentary Commission on Banking Standards, Volume 1: Summary, and Conclusions and recommendations' 12 June 2013, 8 < <http://www.parliament.uk/documents/banking-commission/Banking-final-report-volume-i.pdf>>.

<sup>5</sup> Ibid., 41.

From the statement, it is abundantly clear that the legislators were not convinced that reforms to corporate governance or change in leadership is going to alter the bad behaviours of those who manage and govern the banks. Something more profound and rigorous was needed.

According to the Chief Executive Officer of the Financial Conduct Authority (FCA), Andrew Bailey,

Culture matters a great deal. However, culture is not a tangible thing that can be taken down from a shelf and inspected. Culture is a way of doing things and a set of attitudes that determine behaviour by everyone involved in the organisation. It is shaped by many influences – incentive structures, risk management, the effectiveness of management and governance – all of which are examined by FCA supervisors in the firms we regulate.<sup>6</sup>

Furthermore, Jonathan Davidson the Director of Supervision of the FCA said that,

Changing culture is very difficult and we know it takes time. Why is this? It's because culture comes from the past. CEOs, boards, programmes, systems and controls come and go regularly. Mindsets are developed and reinforced over years and even decades and are passed down from one generation to the next... So, the stakes are high and we are and will be paying very close attention to the culture of firms and what boards and management are doing to shape the culture, of which governance is a key factor.<sup>7</sup>

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<sup>6</sup> Andrew Bailey, 'The FCA is making senior management responsible for the culture in their firms', *The Guardian*, 27 September 2016 <<https://www.theguardian.com/business/2016/sep/27/the-fca-is-making-senior-management-responsible-for-the-culture-in-their-firms>>.

<sup>7</sup> Jonathan Davidson, 'Getting culture and conduct right - the role of the regulator' (Speech delivered at the 2nd Annual Culture and Conduct Forum for the Financial Services Industry in London, 12 July 2016) <<https://www.fca.org.uk/news/speeches/getting-culture-and-conduct-right-role-regulator>>.

Therefore, the regulatory solution was to introduce new stringent measures to provoke change and alter the behaviours of senior bank managers. In essence, the reforms are aimed primarily at reining in the leadership of banks and the financial services sector. However, there are very few studies, in leadership terms, of the cause of why senior bank managers behaved badly.

One exception is a study by Kerr and Robinson's in their assessment of the Scottish financial sector's 'tartan mafia' that, '[t]raditionally shared a class habitus and shared social cultural capital inculcated through education, military service and sports, pastimes and membership.'<sup>8</sup> This emphasises notions of likeness and the difficulty in changing leader behaviours. In relation to this, the former Dean of Henley Business School, Christopher Bones describes the legacy of a leadership generation which dominated business, politics and the media. In *'The Cult of the Leader: A Manifesto for More Authentic Business'*, Bones provides compelling arguments related to what was wrong with leaders:<sup>9</sup>

1. The current leadership crop is a generation whose values were driven by a desire to be seen as successful. They embraced the trappings of success as self-promotion. They were deemed worth it because of the idea of leadership perfection and the shortage of leadership talent.

2. McKinsey's 1990's 'war for talent' argued that talent was limited and organizations competed for it by recruiting the best and paying them accordingly. This was apparent in banking and financial services but the public sector also fell into this trap.

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<sup>8</sup> R. Kerr and S. Robinson, 'Leadership as an elite field: Scottish banking leaders and the crisis of 2007-2009', (2011) 7, *Leadership*, 151-173.

<sup>9</sup> Christopher Bones, *The Cult of the Leader: A Manifesto for More Authentic Business* (John Wiley and Sons, 2011).

3. Leaders used these arguments to push for a greater share of profits as the power of the real owners of capital in businesses declined. Bones argues that remuneration reporting and approval be compulsory and earnings ratios across businesses be reported.

Therefore, the factors that drive leadership and the climate in which they operate are far more fluid than what the law envisages and stipulates. More fundamentally, the disciplines of law and leadership stem from different assumptions about the human psyche, behavioral tendencies and how social norms are molded. As such, the efficacy of the recent law reforms could be open to question.

According to Maak and Pless responsible leadership can be construed as a, ‘values-based and principle-driven relationship between leaders and stakeholders who are connected through a shared sense of meaning and purpose through which they raise to higher levels of motivation and commitment for achieving sustainable value creation and responsible change’.<sup>10</sup> However, issues such as, the locus of responsible leadership, in terms of level and distribution of power, the kinds of behaviours and activities that would distinguish responsible leadership from other forms of leadership, and the extent to which one can influence the purpose of business within a tightly structured institutional framework of global capitalism are not directly addressed in the recent bank reforms.

Whilst the recent reforms in the United Kingdom had endeavoured to transform the way financial services sector do business, the focus of this paper is to examine the legal and leadership dimensions of regulating bank culture. A key feature of the reforms is to empower the regulators to intervene and regulate bank leadership so as to prevent similar failures from the

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<sup>10</sup> T. Maak and N. M. Pless, ‘Business Leaders as Citizens of the World: Advancing Humanism on a Global Scale’ (2009) 88, *Journal of Business Ethics*, 539.

GFC and recent scandals from repeating. However, the notion of regulating culture is a novel one as culture is a complex social phenomenon. It is thus fitting to re-examine how recent law reforms anticipate the behaviour of senior bank managers would change and the culture of banks to be transformed.

### **The Regulation of Culture via the Concept of Legal Accountability:**

Early in April 2013, the then Director of Supervision of the FCA, Clive Adamson said that,

In many cases, where things have gone wrong, whether it is mis-selling of PPI or in attempting to manipulate LIBOR, a cultural issue is at the heart of the problem. It is fair to say that to many in the outside world, the cultural approach of doing the right thing has been lost for financial services. It is clear to us, therefore, particularly as a conduct regulator, that the cultural characteristics of a firm are a key driver of potentially poor behaviour... For us, we [FCA] view culture through the lens of what matters to us as a conduct regulator. This means an effective culture is one that supports a business model and business practices that have at their core, the fair treatment of customers and behaviours that do not harm market integrity.<sup>11</sup>

It is clear that the FCA views culture as a contributing factor to why banks behaved badly. Andrew Bailey, who was then the Chief Executive of the Prudential Regulation Authority said in his speech in May 2016 that, 'Culture has thus laid the ground for bad outcomes, for instance where management are so convinced of their rightness that they hurtle for the cliff without

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<sup>11</sup> Clive Adamson, 'The importance of culture in driving behaviours of firms and how the FCA will assess this' (Speech at the CFA Society delivered on 19 April 2013) <<https://www.fca.org.uk/news/speeches/importance-culture-driving-behaviours-firms-and-how-fca-will-assess>>.

questioning the direction of travel.’<sup>12</sup> However, before exploring how the FCA regulates the culture of banks, it is pertinent to discuss what culture is and whether culture can be regulated.

Freiberg writes that, “Culture’ is a social phenomenon and can be understood as ‘learned knowledge, belief, art, morals, law and custom’ in society. It is a powerful force that may determine the development and operation of a regulatory system.’<sup>13</sup> From this statement, it is evident that culture is a social norm rather than a set of written rules. This in turn is a challenge for regulators or even legislators to draft a set of rules to regulate a social phenomenon.

This does not mean that law and culture exist in isolation from each other. The law can help to shape culture, and as such be perceived as a product of a social construction,<sup>14</sup> or a creature of culture.<sup>15</sup> Culture also plays a role in voluntary compliance of the law by supporting moral congruence, motivating adherence and reducing deviancy.<sup>16</sup> However, internal contradictions between competing values may provoke discord or contest for dominance, and as such is hierarchical, dynamic and fluid.<sup>17</sup> Therefore, the relationship between the law and culture is a complex one that is not easy to untangle into a neat set of statutory statements.<sup>18</sup> Andrew Bailey also reinforced that,

As regulators, we are not able, and should not try, to determine the culture of firms. We cannot write a regulatory rule that settles culture. Rather, it is the product of many things, which regulators can influence, but much more directly which firms themselves

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<sup>12</sup> Andrew Bailey, ‘Culture in financial services – a regulator’s perspective’ (Speech at the at the City Week 2016 Conference on 9 May 2016) <<http://www.bankofengland.co.uk/publications/Pages/speeches/2016/901.aspx>>.

<sup>13</sup> Arie Freiberg, *The Tools of Regulation* (The Federation Press, 2010) 104.

<sup>14</sup> Helen Stacy, *Postmodernism and Law: Jurisprudence in a Fragmenting World* (Ashgate, 2001) 57.

<sup>15</sup> Sionaidh Douglas-Scott, *Law after Modernity* (Hart Publishing, 2013) 4.

<sup>16</sup> Christopher Hodges, *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Hart Publishing, 2015) 35.

<sup>17</sup> Fiona Haines, *The Paradox of Regulation: What Regulation Can Achieve and What it Cannot* (Edward Elgar, 2011) 45-6.

<sup>18</sup> Sionaidh Douglas-Scott, *Law after Modernity* (Hart Publishing, 2013) 383.

can shape. We seek to ensure that firms have robust governance, which includes appropriate challenge from all levels of the organisation; and promote the acceptance that not all news can be good and the willingness to act on and respond promptly to bad news.<sup>19</sup>

Thus, the FCA sees the bolstering of good governance as critical to changing the banks' culture. Furthermore, Jonathan Davidson adds that,

The first factor shaping culture is 'tone from the top'. As Gandhi advised: 'be the change that you want to see in the world'. We are therefore very interested to understand how leaders are role modelling the professed culture... So, the role of all leaders is to encourage a culture of personal responsibility and impress upon all staff the value of good culture to the health of the firm and the FS [Financial Services] industry more widely.<sup>20</sup>

The introduction of individual accountability is central to the FCA's strategy to embed a culture of personal responsibility within the banking sector.<sup>21</sup> Accountability is well tested area of the law. The term accountability can be characterized, '[a]s a process whereby individuals are required to explain or justify their decisions or acts to another person or body in accordance with certain criteria, and then to make amends for any fault or error.'<sup>22</sup> Accordingly, decisions made by individuals who are bound by accountability rules must be able to be justified, explained and

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<sup>19</sup> Andrew Bailey, 'Culture in financial services – a regulator's perspective' (Speech at the at the City Week 2016 Conference on 9 May 2016) <<http://www.bankofengland.co.uk/publications/Pages/speeches/2016/901.aspx>>.

<sup>20</sup> Jonathan Davidson, 'Getting culture and conduct right - the role of the regulator' (Speech delivered at the 2nd Annual Culture and Conduct Forum for the Financial Services Industry in London, 12 July 2016) <<https://www.fca.org.uk/news/speeches/getting-culture-and-conduct-right-role-regulator>>.

<sup>21</sup> Financial Conduct Authority, 'New accountability regime for banks and insurers comes into force' (Press Release, 7 March 2016) <<https://www.fca.org.uk/news/press-releases/new-accountability-regime-banks-and-insurers-comes-force>>.

<sup>22</sup> Peter Vincent-Jones, *The New Public Contracting: Regulation, Responsiveness, Relationality* (Oxford University Press, 2006) 75.



subjected to scrutiny.<sup>23</sup> Legal accountability involves an imposition of liabilities for failures in performing one's prescribed and proscribed set of mandated responsibilities.<sup>24</sup> Further, if accountability is made difficult because the task of allocating responsibility or culpability for collective decisions is difficult to identify with great certainty,<sup>25</sup> then a simple remedy is to stipulate a narrow set of responsibilities for individuals.

Such regulatory strategy suggests that the rules are drafted on factual predication prone to be either under or over inclusive.<sup>26</sup> These rules are inclined to be generalized regulatory measures dealing with a range of events and abstractions based on past and futuristic scenarios, with tendencies to oversimplify the complexities associated with decision making in a dynamic or even volatile environment.<sup>27</sup> Furthermore, these regulatory instruments are also known as command control type rules that might have peripheral influence on the attitudes and values of the targeted group of regulated individuals.<sup>28</sup> Empirical research has shown that the proliferation of laws failed to deter or have a deterrent effect on corporate misconduct or white-collar crimes.<sup>29</sup> As such, strengthening accountability through the imposition of more or stricter legal obligations might not yield the desired outcomes of what legislators and regulators intended. This does not negate the fact that imposing more stringent accountability measures create the perception that regulatory measures are in place to improve supervision of bank staff and discipline those in charge, if misconduct occurred under their watch.

More important is how the debate on regulating the culture going to impact banks? This goes into the heart of the matter - the goals and strategies of financial regulation. Principally, the

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<sup>23</sup> Arie Freiberg, *The Tools of Regulation* (The Federation Press, 2010) 266.

<sup>24</sup> Iredell Jenkins, 'Accountability, Legality and the Social Order', in Sava Vojcanin (ed.) *Law, Culture, and Values: Essays in Honor of Gray L. Dorsey* (Transaction Publishers, 1990) 163, 171.

<sup>25</sup> Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge University Press, 2000) 6-8.

<sup>26</sup> Julia Black, *Rules and Regulators* (Clarendon Press, 1997) 7-9.

<sup>27</sup> *Ibid*, 7.

<sup>28</sup> Steven Vago, *Law and Society* (Pearson Education, 10<sup>th</sup> ed, 2012) 329.

<sup>29</sup> Sally Simpson, *Corporate Crime, Law and Social Control* (Cambridge University Press, 2002) 45-60.

purpose of financial regulation is to assist markets with the aim to achieve efficiency.<sup>30</sup> However, such regulatory aim only holds if, '[t]he various conditions associated with the existence of perfectly competitive markets are fulfilled... [t]he allocation of resources resulting from perfectly competitive markets is 'Pareto optimal''.<sup>31</sup> Even if the premises do not hold, intervention to correct market failures is justifiable for the sake of financial stability, limiting the effects of negative externalities and the prevention of future misconduct.<sup>32</sup> The failures of banks from the GFC experience and the scandals warranted intervention by the government. This took the form of the introduction of the SMR. As Andrew Bailey said, 'Responsibility, as embedded in the Senior Managers Regime, is therefore an important hook to assist in firms' shaping their own culture, and also to provide regulators with the powers to conduct supervisory oversight and to act when needed.'<sup>33</sup>

### **Strengthening Legal Accountability via the New Senior Managers Regime:**

Again, referring to the Report, it states that:

The Commission envisages a new approach to sanctions and enforcement against individuals:

- all key responsibilities within a bank must be assigned to a specific, senior individual.

Even when responsibilities are delegated, or subject to collective decision making, that responsibility will remain with the designated individual;

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<sup>30</sup> John Armour, *et al.*, *Principles of Financial Regulation* (Oxford University Press, 2016) 53.

<sup>31</sup> *Ibid.*, 54.

<sup>32</sup> *Ibid.*, 55-70.

<sup>33</sup> Andrew Bailey, 'Culture in financial services – a regulator's perspective' (Speech at the at the City Week 2016 Conference on 9 May 2016) < <http://www.bankofengland.co.uk/publications/Pages/speeches/2016/901.aspx>>.

- the attribution of individual responsibility will, for the first time, provide for the full use of the range of civil powers that regulators already have to sanction individuals. These include fines, restrictions on responsibilities and a ban from the industry;
- the scope of the new licensing regime will ensure that all those who can do serious harm are subject to the full range of civil enforcement powers. This is a broader group than those to whom those powers currently extend;
- in a case of failure leading to successful enforcement action against a firm, there will be a requirement on relevant Senior Persons to demonstrate that they took all reasonable steps to prevent or mitigate the effects of a specified failing. Those unable to do so would face possible individual enforcement action, switching the burden of proof away from the regulators; and
- a criminal offence will be established applying to Senior Persons carrying out their professional responsibilities in a reckless manner, which may carry a prison sentence; following a conviction, the remuneration received by an individual during the period of reckless behaviour should be recoverable through separate civil proceedings.<sup>34</sup>

It is evident that the government empowers the regulators to not only regulate senior managers with stringent and demanding measures, if bank staffers behaved badly they will be held answerable. As such, these senior bank managers do not just work for the banks and their shareholders, the regulatory oversight under the SMR equips the regulators with the power of not only intervening in the governance and operations of the banks, but also to hold these individuals

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<sup>34</sup> Parliamentary Commission on Banking Standards, 'Changing banking for good: Report of the Parliamentary Commission on Banking Standards, Volume 1: Summary, and Conclusions and recommendations' 12 June 2013, 10 < <http://www.parliament.uk/documents/banking-commission/Banking-final-report-volume-i.pdf>>.

personally liable for their decisions, indecisions, actions or inactions, as well as others under their supervision.

The Report was also very critical of the previous regulatory measures, the Approved Persons Regime (APR) as being too broad and insufficiently focused on senior management.<sup>35</sup> Furthermore, the Report highlighted, '[t]he lack of clarity of responsibilities of individuals at senior level', and '[t]here were gaps in the regulators' enforcement powers'.<sup>36</sup> The wordings of the 'Statements of Principles' were constructed in such a way gave management too much leeway in terms of interpretation.<sup>37</sup> It also seems to encourage management to demarcate their responsibilities to satisfy themselves that their responsibilities had been met without looking further.<sup>38</sup> This led Bagge to note that, 'There is a real danger that potential gaps in the firm's systems and controls may develop which will not be identified, although they may have been caught by a flexible system.'<sup>39</sup> Andrew Bailey adds that, 'Responsibility, as embedded in the Senior Managers Regime, is therefore an important hook to assist in firms' shaping their own culture, and also to provide regulators with the powers to conduct supervisory oversight and to act when needed.'<sup>40</sup>

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<sup>35</sup> HM Treasury, 'Senior Managers and Certification Regime: Extension to all FSMA Authorised Persons', October 2015, 4 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468328/SMCR\\_policy\\_paper\\_final\\_15102015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468328/SMCR_policy_paper_final_15102015.pdf)>.

<sup>36</sup> Ibid.

<sup>37</sup> James Bagge, 'Senior Management Responsibilities under the New Regulatory Regime' (2000) 8, *Journal of Financial Regulation and Compliance*, 201, 204-9.

<sup>38</sup> Ibid., 209.

<sup>39</sup> Ibid.

<sup>40</sup> Andrew Bailey, 'Culture in financial services – a regulator's perspective' (Speech at the at the City Week 2016 Conference on 9 May 2016) <<http://www.bankofengland.co.uk/publications/Pages/speeches/2016/901.aspx>>.

The SMR became effective on 7<sup>th</sup> March 2016 for banks including building societies, credit unions, PRA-designed investment firms and UK branches of overseas banks.<sup>41</sup> The legislative framework for the SMR can be found in the *Financial Services (Banking Reform) Act* 2013 that was consolidated in the *Financial Services and Markets Act* 2000 (FSMA). The senior management functions were stipulated in section 59 of the FSMA. Section 60 of the FSMA created statements of responsibilities for senior management. This includes vetting and approval being required by the regulators.<sup>42</sup> The regulators also have the power to vary the approval of senior managers.<sup>43</sup> More importantly, the FSMA delegated the power to make detailed rules of the SMR to the FCA and PRA.<sup>44</sup>

The emphasis of the SMR rules is to increase the onus on individual accountability with the introduction of statutory duties for the senior managers of banks.<sup>45</sup> In particular, requiring senior managers, [t]o take reasonable steps to prevent regulatory breaches from occurring, or continuing to occur, in their area of responsibility.<sup>46</sup> Further, the regulators introduce specific ‘prescribed responsibilities’ which must be allocated amongst ‘Senior Management Functions’. This is where each senior manager will be allocated responsibilities by the bank, and if the responsibilities are shared, each senior manager will be wholly accountable for it.<sup>47</sup> The regulators also require banks to record their key governance arrangements in a ‘Management Responsibilities Map’ describing the bank’s management and governance arrangements

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<sup>41</sup> Deloitte, ‘Senior Mangers Regime: Individual Accountability and Reasonable Steps’, (2016) 2 <<https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-senior-manager-regime.pdf>>.

<sup>42</sup> Section 60A, *Financial Services and Markets Act* 2000.

<sup>43</sup> Section 63, *Financial Services and Markets Act* 2000.

<sup>44</sup> Sections 59-63, *Financial Services and Markets Act* 2000.

<sup>45</sup> <sup>45</sup> Deloitte, ‘Senior Mangers Regime: Individual Accountability and Reasonable Steps’, (2016) 2 <<https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-senior-manager-regime.pdf>>. Note that HM Treasury had announced in October 2015 that the SMR will be extended to all regulated firms in the UK by 2018.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., 5.

including the key reporting lines, committee structures and details about key management and their responsibilities.<sup>48</sup> ‘Senior Management Functions’ also need to complete individual ‘Statements of Responsibilities’ that clearly sets out the role they are undertaking and describing those areas of the bank for which they are responsible.<sup>49</sup> All of which denotes that senior bankers must ensure they have full control over their areas of responsibility, everything senior managers do or not do must be defensible with evidence to support those decisions.<sup>50</sup>

Senior management would be occupied with creating a paper trail of justifications or explanation about satisfying their legal duties rather than the job of managing the affairs of a bank like a business entity, in effect making banks more like quasi-governmental entities with the threat of prosecution or at least, possible regulatory scrutiny constantly on the minds of the executives. In particular, senior bank managers have to ensure whether everything they did or did not do at work satisfy the legal test of taking reasonable steps to prevent regulatory breaches from occurring under their watch or continue to occur.<sup>51</sup> This would also involve taking reasonable steps to effectively control their area of business responsibilities, to monitor the delegated responsibilities, and at the same time, ensure those under them complied with all regulatory requirements.<sup>52</sup> Such regulatory duties would also encompass what the senior manager knows or ought to know, whether due diligence was exercised in every decision, any alternative actions he or she should have taken with proper risk assessments, and whether the delegated responsibilities were properly arranged, managed and monitored.<sup>53</sup> In short, the duties are a non-exhaustive list of concerns and considerations to demonstrate that senior managers

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<sup>48</sup> Ibid., 5-6.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid., 7.

have undertaken all reasonable steps on an ongoing basis to meet the regulatory demands of the SMR.<sup>54</sup> Finally, the duty of an assigned responsible person to report to the regulators (FCA and PRA or either) for breaches or disciplinary actions against an employee meant that the banks are in effective assisting the regulators to police their staff. However, the new legal responsibilities are no substitute for leadership. Besides, even if the new rules put the spotlight on the behaviour and the decisions of senior management as well as how they manage, as noted earlier culture is a social norm rather than a set of written rules, therefore those who make or shape norms need to foster as well as nurture the right culture.

It is important to note that the approach and mindset from a business perspective about ‘the problem’ are quite distinct from legal solutions. This is evident in the discourse from the business literature. Legal remedies can only go so far to transform the culture of banks and how they are being managed. They need to examine business viewpoints about leadership and its impact on the culture of organizations.

### **The Role of Leadership in Shaping Culture**

There is a growing clamour for evidence of more ethical behaviour amongst leaders in the financial arena. This, in turn, leads to a growing demand for organizations to *overtly* display greater levels of responsibility, governance and promotion of ethical leadership to actively illustrate that things have changed.<sup>55</sup> The rush towards notions such as, authentic and ethical leadership may have begun well before the economic crash of 2007, but nevertheless they do

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<sup>54</sup> Ibid., 11.

<sup>55</sup> D. M. Mayer, M. Kuenzi, R. Greenbaum, M. Bardes and R. Salvador, ‘How low does ethical leadership flow? Test of a trickle-down model’, (2009) 108, *Organisational Behaviour and Human Decision Processes*, 1-13.

reflect a need to seek solace in what is positive about leaders and leadership in general. However, in studying what makes for effective and ethical leadership we are faced with a number of problems. There is a growing realisation that we have failed to investigate seriously what were the leadership causes of the economic crash.<sup>56</sup> This failure to explore what went wrong in leadership terms encourages platitudes of change. Senior leaders in politics and banking might talk about the need for ethical behaviours (as witnessed by Mark Carney, the Governor of the Bank of England, in his 2016 Mansion House speech where he pledges to end the irresponsibility practice that has gripped the financial sector), but we simply do not explore what this will be, how it will be enacted, and more importantly, who is leading the way as exemplars. This tends to focus attention towards notions of leadership and how leaders attempt to influence and change culture.

Notions of regulation seem to be predominant, but lack overall awareness and linkage to the market need for change. The main shock and awe strategy that organizations use to trigger the leadership/follower life cycle of change is to invoke '*the logic of the market*',<sup>57</sup> which is a series of linked change mantras intent on mobilizing support for cultural change throughout the organization. The logic of the market suggests that unless the organization changes to adapt to market conditions then there is a real and present danger to the position of the organization and thus maintaining jobs and remuneration becomes increasingly problematic. The strategy of employing the logic of the market as a cultural change technology requires a leadership strategy to help construct a version of social reality that triggers the leadership/follower life cycle. The logic of the market supported by regulation and skillful and effective communication is one way

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<sup>56</sup> R. Kerr and S. Robinson, 'Leadership as an elite field: Scottish banking leaders and the crisis of 2007-2009', (2011) 7, *Leadership*, 151-173; D. Tourish, 'Some announcements, reaffirming the critical ethos of Leadership, and what we look for in submissions', (2015) 11, *Leadership*, 135-141.

<sup>57</sup> H. Willmott, 'Strength is Ignorance: Slavery is Freedom: Managing Culture in Modern Organizations', (1993) 4, *Journal of Management Studies*, 515-38.



to do this. The logic of the market must be supported by a grand spectacle that provides the ‘*evidence*’ that change is required. The current spectacle is both changing social and political dynamics, which threaten a sense of survival of the business and financial leaders have to skillfully present the case for cultural change around a change spectacle supported with the change mantras. If they do this successfully then staff may elect to shift their identities to follow if they feel it is in their interests to do so and if they also feel leadership can meet with their survival needs. This strategy does work but it does not provide in many cases long lasting sustainable cultural change.<sup>58</sup> The preferred strategy would always be to cultivate a culture that has the built-in capacity for organizational learning and cultural change wired in to its meaning and value systems.

Another key aspect that leadership needs to address is the notion of power and culture. The power of the dominant group can influence the cultural construction and performance of attitudes, behaviors and discourses in organizations. Managers may be aware of alternative cultural possibilities but feel disempowered as a result of the constraining effect of corporate culture.<sup>59</sup> Cultural control may be achieved through the symbolic use of power by privileging particular expressive events. Expressive hegemony as a form of power has the potential of ‘*freezing*’ a particular perspective on social reality. It does this by excluding alternative discourses. These discourses create the very possibility of cultural change by opening up for discussion a review of existing ideologies, practices, social/political/strategic and technological orientations. Appreciating the role of power, in shaping realities, is crucial in understanding the dynamics of cultural management which is primarily concerned with controlling the agency of

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<sup>58</sup> D. Buchanan, L. Fitzgerald, D. Ketley, R. Gollop, J. L. Jones, S. S. Lamont, A. Neath and E. Whitby, ‘No going back: A review of the literature on sustaining organizational change’, (2005) 7, *International Journal of Management Reviews*, 189–205.

<sup>59</sup> M. Alvesson, *Understanding Organizational Culture* (Sage Publications, 2002).

employees, their identity choices, the concepts in uses and the forms of every day talk and thus the shaping of organizational reality perspectives. Regulatory activities can begin to shape the discourse of change; however, the deep-set and embedded power culture also needs to be more formally addressed.

There will always be opposing forces in organizations, which may influence the outcome of cultural struggles. This perspective illustrates the pluralistic nature of organizations, which renders the perspective of an integrated culture that is based on the harmonious consensus of meaning highly problematic. The concept of organizations as sites of power struggles over meaning definitions introduces a paradigm to consider. The biased integrationist and functionalist approach to cultural change which is popular in the literature and both consultancy and managerial practice, fails to acknowledge how managerial practices reproduce and protect relations of power in organizations and render functionalist and regulatory change as politically naïve.

The primary activity of corporate culturism is to re-engineer organizational culture through meaning management. The objective is to construct consensus with what is perceived as just, valued and therefore considered as real and worthwhile. Hegemony is concerned with creating management cultures where the availability of alternative value positions or organizational perspectives are systematically cleansed. This cleansing occurs through the domination of discourse and the censorship and subjugation of alternative discourses that do not fit the dominant narrative. Corporate culturism may not have articulated its agenda as hegemony but the techniques, applications and guiding theory of cultural management are concerned with managing the definition of reality on the part of the workforce. Corporate culturism was and remains fundamentally concerned with the socio-ideological control of the interpretative and

expressive capacity of the organizational self. How managers process their inter-subjective sense making activities is central to understanding the dynamics of organizational and how best to approach cultural change interventions. This is exemplified the works of Kerr and Robinson and their assertion that there is greater value in considering leaders as members of an elite field with the concentration of power in these elite groups.<sup>60</sup> This has a lot to do with not perceiving leadership as an individualistic phenomenon or as constructed along a leader/follower axis.<sup>61</sup> Grint sounds a note of caution concerning leadership.<sup>62</sup> His arguments centre around socially-constructed notions which create a sanctity around the concept of leadership and, '[t]herefore, we need to consider not how to revoke the sacred leadership of individuals (and I use the plural of individual as distinct from the collective – 'group' purposely) but how to bind those individuals closer to the communities they lead without requiring the community to strangle individualism.'<sup>63</sup>

Thus far a brief review of the literature on leadership has made plain that the enactment of legal measures to hold senior bank managers individually accountable is unlikely to change the way they behave in a meaningful way, let alone the culture of banks. It is fair to say from a business perspective laws do not change culture, people do. However, this is not to claim that the law reform is unimportant. In fact, reforming the law denotes a change in standards of behaviour. The next step is to explore how leadership can inform the law to facilitate change for the better.

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<sup>60</sup> R. Kerr and S. Robinson, 'Leadership as an elite field: Scottish banking leaders and the crisis of 2007-2009', (2011) 7, *Leadership*, 153.

<sup>61</sup> K. Grint, 'Problems, problems, problems: The Social Construction of Leadership', (2005) 58, *Human Relations*, 1467-1494.

<sup>62</sup> K. Grint, 'The Sacred in Leadership', (2010) 31, *Organization Studies*, 103.

<sup>63</sup> Ibid.

## **Conclusion and Commentaries:**

Recent reforms are aimed at transforming the way the financial services sector in the United Kingdom does business. A cornerstone of the new regulatory measures is to regulate the culture of banks by imposing more rules to ensure senior bank managers are accountable for their actions, inactions, decisions and indecisions, as well as others under their watch. Whilst this appears to be a neat compartmentalization of the ‘problem’, the premise of this regulatory prescription is that leaders have or should have absolute control of the affairs of the organization. However, a brief survey of the literature on leadership reveals an entirely different picture. More research into the dynamics and consequences of how regulations affect the leadership and in turn shape the culture of organizations is critical to finding practical solutions. Without meaningful dialogue between business viewpoints about leadership and the legal approach, it is difficult to see how the reforms could work in actuality beyond superficial compliance.

With Brexit negotiations about to commence, it is even more crucial for the United Kingdom to bolster public assurances in financial services sector because the GFC and recent bank scandals have demonstrated that the combination of market uncertainty and corporate misconduct can create an economic crisis. This calls for robust regulations and good leadership to promote confidence. Therefore the answer is to strengthen legal accountability and nurture better leadership.

Another aspect of this reform that was not discussed in this paper, but warrants further investigation is the issue of the international elements of leadership and organizational culture. The SMR not only applies to banks in the United Kingdom, it is also mandatory for certain key executives in overseas branches. Since leadership is interpreted in different ways and in different

lands and languages,<sup>64</sup> it would therefore appear necessary to examine the context, '[t]hat both legitimates a particular form of action and constitutes the world in the process.'<sup>65</sup> To accept the existence of worldviews means to research cultural leadership within the financial sector in a wider, culturally diverse perspective, understanding differing philosophic frameworks and being sensitive to the history and needs of different cultural communities.<sup>66</sup> From a legal perspective this is even more crucial to the efficacy of the new rules as leaders in non-Western countries like those in Asia, would lead and run the business from a different mind-set compared to what the laws in the United Kingdom prescribe.<sup>67</sup> In short, we argue that law reform is only the beginning of the journey to regulate the culture of banks.

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<sup>64</sup> E. McElhatton and B. Jackson, 'Paradox in harmony: formulating a Chinese model of leadership', (2012) 8, *Leadership*, 441.

<sup>65</sup> K. Grint, 'Problems, problems, problems: The Social Construction of Leadership', (2005) 58, *Human Relations*, 1471.

<sup>66</sup> D. Ruwhiu and M. Cone, 'Advancing a pragmatist epistemology in organisational research', (2010) 5, *Qualitative Research in Organizations and Management*, 108-126.

<sup>67</sup> For example, see Angus Young, *Family Business and Corporate Governance in Hong Kong* (Wolter Kluwer, 2014).